

CRR-1433 of 2019 (O&M)

2023:PHHC:044520

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-1433 of 2019 (O&M)

Reserved on: 22.03.2023

Pronounced on: 27.03.2023

Vijay Gupta

.....Petitioner

Versus

Sanjeev Kareer and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. K.K. Jain, Advocate, for the petitioner.

None for respondent No.1.

Mr. Anup Singh, AAG, Punjab.

NAMIT KUMAR, J.

Petitioner has filed the instant revision petition assailing judgment and order dated 17.02.2018 passed by learned Judicial Magistrate Ist Class, Malerkotla, whereby he has been convicted and sentenced to undergo rigorous imprisonment for a period of one year under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and to pay compensation to the tune of double the cheque amount to respondent No.1-complainant as also the judgment dated 14.05.2019 passed by the Additional Sessions Judge, Sangrur, whereby appeal of the petitioner against the aforesaid judgment of conviction and order of sentence dated 17.02.2018 has been dismissed.

The brief facts of the complaint are that on 01.09.2015, petitioner borrowed a sum of Rs.3,00,000/- from respondent No.1-complainant at Ahmedgarh. The petitioner admitted the legal liability

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and in order to discharge his partial liability, issued two post dated cheques i.e. cheque bearing no.531121 dated 28.09.2015 for a sum of Rs.1,56,000/- and cheque bearing no.531124 dated 28.09.2015 for a sum of Rs.1,31,580/- drawn on UCO Bank, Branch Sirhind Road, Patiala, out of his A/c no.15780100004253 in favour of respondent No.1-complainant with the assurance that the said cheques would be duly honoured on its presentation in the drawee bank. The petitioner signed the cheques in question in presence of the complainant. Respondent No.1-complainant presented cheques in question to his banker i.e. Union Bank of India, Branch Ahmedgarh, for encashment and realization of the amount of the cheques. The drawee bank dishonoured the cheque bearing no.531124 due to 'funds insufficient', whereas, the cheque bearing no.531121 was dishonoured due to 'payment stopped by drawer' vide memo dated 20.11.2015. Thereafter, respondent No.1-complainant requested the petitioner to make the payment of the cheques in question, but he refused to make the payment. After receiving intimation regarding dishonour of the cheques, respondent No.1-complainant issued a legal notice to the petitioner through his counsel, thereby calling upon the petitioner to make the payment of the cheques amount within 15 days from the receipt of notice, but he intentionally did not receive the notice. Hence, complaint under Section 138 of the Act was instituted.

After hearing both the parties and perusing the evidence on record, learned Judicial Magistrate Ist Class, Malerkotla, vide judgment of conviction and order of sentence dated 17.02.2018

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convicted and sentenced the petitioner under Section 138 of the Act to undergo rigorous imprisonment for a period of one year and to pay compensation to the tune of double the cheque amount to respondent No.1-complainant.

The aforesaid judgment and order dated 17.02.2018 were challenged by the petitioner in appeal before the learned Additional Sessions Judge, Sangrur, who, vide judgment dated 14.05.2019, dismissed the same finding it without any merit.

Feeling aggrieved, petitioner has filed the instant revision petition with a prayer that both the aforesaid judgments passed by the Courts below be set aside and the petitioner may be acquitted of the charges levelled against him.

Learned counsel for the petitioner submits that matter has been compromised between the parties and the petitioner has handed over demand draft of Rs.2,88,000/- to respondent No.1 as a full and final settlement, which has been accepted by respondent No.1. Learned counsel has relied upon the judgment in the case of ***Tilak Kataria vs. State of Haryana and another, 2021 (3) RCR (Criminal) 404***, wherein, after considering various judgments of the Apex Court, it has been held that when the complainant does not have any objection, the proceedings should come to an end. The Hon'ble Supreme Court in ***Ramgopal and another vs. State of Madhya Pradesh, 2021(4) RCR (Criminal) 322***, has held that in non-compoundable cases of pre-dominantly private nature, even if compromise is reached after conviction, the proceedings can be quashed under Section 482 Cr.P.C. Further, the compromise in

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the present case is found to be fully covered in consonance of judgments and directions issued by the Court in ***Kulwinder Singh and others vs. State of Punjab, 2007(3) RCR (Criminal) 1052*** and ***Gian Singh vs. State of Punjab and another, 2012(4) RCR (Crl.) 543***. He further submits that the Hon'ble Supreme Court in ***A.T. Sivaperumal vs. Mohammed Hyath (D) by LRs, decided on 27.03.2017***, has held that once the settlement between the parties has been arrived at, the conviction can also be set aside and the litigation too. Similar view has been taken by a Coordinate Bench of this Court in the case of ***Jagmohan Vs. Sandeep Aggarwal and another, 2021(4) RCR (Criminal) 86***.

Learned counsel for petitioner has submitted that as the matter stands compromised, CRM-19856 of 2019 filed under Section 482 Cr.P.C. for compounding the offence by the petitioner, with no objection from respondent No.1, who has agreed to the compounding of the offence and admitted that he has compromised the matter and received the demand draft, in terms of compromise, may be allowed and permission may be granted to the parties to compound the offence under Section 138 of the Act in view of the law laid down by the Hon'ble Supreme Court in ***Damodar S. Prabhu vs. Sayed Babalal H, 2010 (2) RCR (Criminal) 851***; the impugned judgments and order passed by the learned trial Court and the learned Appellate Court may be set aside and the petitioner be acquitted of the charge.

I have heard learned counsel for the petitioner and perused

the record.

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During the course of preliminary hearing, the trial Court was directed to record the statements of all the concerned parties, with regard to the genuineness and validity or otherwise of the compromise by this Court.

In compliance thereof, report from Judicial Magistrate First Class, Malerkotla, has been received through District and Sessions Judge, Sangrur, with statements of parties, in which, it has been mentioned that the compromise is genuine, voluntary and without any coercion or undue influence.

On 08.07.2019 Mr. Sushant Kareer, Advocate, appeared on behalf of respondent No.1 and admitted that compromise has been effected between the parties and demand draft of an amount of Rs.2,88,000/- has been received by the complainant.

In the present case, the cheque amount is Rs.2,87,580/-. In view of the law laid down in ***Damodar S. Prabhu's*** case (supra), compounding of the present offence can be allowed provided the petitioner-accused pays 15% of the cheque amount by way of costs. On calculation, 15% of the cheque amount comes to be Rs.43,137/-. As noticed above, the parties have settled the dispute by way of compromise (Annexure P-X). Thus, this Court grants permission to compound the offence punishable under Section 138 NI Act.

In view of the above, the impugned judgment of conviction and order of sentence dated 17.02.2018 passed by the learned Judicial Magistrate, 1st Class, Malerkotla, and the judgment dated 14.05.2019 passed by the learned Additional Sessions Judge,

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Sangrur, are set aside; the complaint under Section 138 of the Act stands dismissed and the petitioner stands acquitted of the charge, subject to his depositing the costs of 43,137/- with the Punjab State Legal Services Authority, in view of the law laid down by the Hon'ble Supreme Court in ***Damodar S. Prabhu's*** case (supra), within one month from the receipt of the certified copy of this order. The present petition is allowed in the aforementioned terms. Needless to say that the parties shall remain bound by the terms and conditions of the compromise.

Pending application(s), if any, stand disposed of in view of the abovesaid judgment.

27.03.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No